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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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STATE DOCUMENTS

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OFFICE OF RESEARCH

Room 309, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803)734-3230

House Week in Review

The House Ways and Means Committee last Thursday unveiled a draft proposal to restructure state government, under which restructuring would be accomplished through this year's general appropriations act. Under this proposal, state government would shrink from over 100 agencies to 32. About one-half of the agency heads would be appointed by the governor with the advice and consent of the General Assembly. Several new departments would be created, including a Department of Commerce and a Department of Public Safety. A copy of the draft proposal is enclosed at the end of this Update.

The Joint Legislative Committee on Health Care Planning and Oversight continues to hold hearings on comprehensive health care reform. Though the committee has not issued a final draft for health care reform, it is expected to do so by the end of March, at which time comprehensive health care reform legislation will be introduced in the House and Senate.

The House also gave second and third reading to several bills last week. Among the measures given second and third reading were H. 3060, a joint resolution directing the Joint Legislative Committee on Children to establish a task force to study juvenile crime; H. 3071, which would allow a taxpayer to be represented by a registered, licensed or certified real estate appraiser during the administrative tax process in matters limited to questions concerning valuation of real property; and H. 3100, which would allow under any circumstance a person age 65 or older to cast an absentee ballot. Second and third reading also was given to H. 3280, which provides for a procedure to dissolve a rural community water district.

Legislative Update, February 9, 1993

Bills Introduced

The following bills were introduced in the House of Representatives last week. Not all bills introduced in the House are featured here. The summaries are arranged according to the standing committee to which the legislation was referred.

Agriculture, Natural Resources and Environmental Affairs

Saltwater/Freshwater Dividing Line (H. 3327, Rep. Snow). For the purpose of fishing regulations, this bill would redefine the saltwater/freshwater boundary line on the Cooper River so as to be at the confluence of the Old Back River at Coast Guard Navigational Marker R82. This bill would also change the area for lawful crab pot fishing on this river so as to run upstream to where the river forks at the confluence of its east/west branches.

Fishing Restrictions (H. 3328, Rep. Snow). This bill expands the bodies of water where it is unlawful to take or possess striped bass or rockfish less than 18 inches so as to prohibit that activity on the Broad River southward from the Columbia Canal lock and dam to the confluence of the Broad River with the lower Saluda River and the Santee River southward to the Intracoastal Waterway.

Quail Trapping (H. 3357, Rep. Snow). This bill would require anyone seeking a permit to trap quail to provide proof with the permit of property ownership or lease-hold interest for the property upon which quail traps are to be operated, a county or

highway map designating the property's location, and an aerial photo, a tax map or plan designating the property boundaries. The State Department of Wildlife and Marine Resources could deny or revoke the permit at its discretion.

Permits to take Game Animals (H. 3358, Rep. Snow). This bill would allow a property owner or his designee to capture furbearing animals or squirrels within 100 yards of the owner's home without a permit when the animal is causing damage to the owner's home or property. Any animal captured under these provisions would be destroyed.

Hunting along Highways (H. 3360, Rep. Corning). This bill would make it unlawful to hunt within 50 yards of the edge of a through federal highway or through state primary roadway and to hunt big game with a rifle within 50 yards of the edge of an open county, state or federally-maintained through roadway. A person violating these provisions would be guilty of a misdemeanor and, upon conviction, be fined a maximum of \$200 or imprisoned for not more than 30 days.

Nonresidential Hunting and Fishing Privileges (H. 3383, Rep. Haskins). Under this bill, no license or permit for hunting and fishing would be required for a nonresident of South Carolina age 65 and older if the person's state of residence allows the same privilege for South Carolina residents age 65 and older. A nonresident who hunts and fishes under these provisions would be required to carry proof of his age and residency from the state where he resides. This privilege to hunt and fish without a license or permit, however, would not extend to permits to hunt in Wildlife Management Areas.

Education and Public Works

Alternative Teacher Certification (H. 3323, Rep. Corning). This bill would provide an alternative method of teacher certification based on successful completion of a training program approved by the State Board of Education. A person participating in this program would be issued a provisional certificate, good for a year, and upon satisfactory completion of the program would be awarded the standard certificate for teacher certification.

A person seeking to participate in an alternative training program would have to possess a bachelor's degree and pass a test of subject knowledge matter approved by the State Board of Education (except that for elementary and kindergarten teaching, the candidate would pass a test of general knowledge as approved by the Board). In order to be eligible to take the subject field test, the applicant would have to have completed at least 30 semester hours in a coherent major or 5 years' experience in the subject field. The person seeking to participate in the program also would have to have been offered employment in a school approved by the

State Superintendent of Education, at the recommendation of the Office of Teacher Education and Certification, to offer a certification training program, and would have to meet applicable health requirements for standard certification.

A district seeking to hire a provisional teacher would submit a plan to the State Department of Education and receive approval of the plan. The plan would describe the key elements of the proposed training program in accordance with guidelines established and published by the Department. The district also would show evidence in the plan of having sought joint sponsorship of the approved training programs with colleges and universities. No school district could employ a provisional teacher without submitting a plan and receiving the approval of the commissioner at the Office of Teacher Education and Certification.

Each approved alternative training program would provide essential knowledge and skills to provisional teachers through 3 phases of training. The first phase would be a full-time seminar or practicum of at least 20 days' duration occurring before the provisional teacher takes full responsibility for the classroom. The seminar or practicum would provide formal instruction in the essential areas for professional study. It would introduce basic teaching skills through supervised teaching experiences with students. The second phase would be a period of intensive on-the-job supervision beginning with the first day on which the provisional teacher assumes full responsibility for a classroom and continuing at least 10 weeks, during which time the provisional teacher would be visited and critiqued at least once a week by members of a professional staff team and would be observed and formally evaluated at the end of 5 and 10 weeks by appropriately certified members of the team. The third phase would be an additional period of continued supervision and evaluation of at least 20 weeks' duration, during which time the provisional teacher would be visited and critiqued at least once a month and would be observed formally and evaluated at least twice. About 200 hours of formal instruction would be provided in all 3 phases of the program combined.

Training and supervision of provisional teachers in approved alternative programs would be provided by a professional support team comprised of a school principal, an experienced teacher, a college faculty member and a curriculum supervisor. The school principal would serve as chairman of the team. The State Department of Education would coordinate the training efforts of districts and establish regional programs for provisional teachers. The Department also would provide orientation programs for support team members. At the conclusion of the alternative training program, the support team chairman would prepare a comprehensive evaluation report on the provisional teacher's performance, and the report would be submitted to the Office of Teacher Education and Certification and would contain a recommendation on whether a standard certificate should be issued to the provisional teacher. The final comprehensive evaluation report on each provisional teacher would include 1 of 3 recommendations:

- (1) Approved: Issuance of standard certificate recommended;
- (2) Insufficient: Issuance of standard certificate not recommended but candidate should be allowed to seek entry on 1 more occasion in the future into a state-approved training program; or
- (3) Disapproved: Issuance of standard certificate not recommended and candidate should not be allowed to enter into a state-approved training program.

If the Office of Teacher Education and Certification receives an adverse recommendation, the provisional teacher would be notified of the date the Office will consider the recommendation, and the provisional teacher would be allowed to provide the office with materials documenting why he believes standard certification should be awarded. The Office would take final action on the decision of the State Board of Education concerning the certification of provisional teachers.

Upon the Office of Teacher Education and Certification's receipt of the report and a favorable recommendation, the standard certificate would be issued to the provisional teacher. A decision by the Office to deny issue of a standard certificate could be appealed by the provisional teacher to the State Board of Education.

Commercial Driver's Licenses (H. 3336, Rep. Snow). This bill would authorize operators of vehicles of farm-related service industries to drive their vehicles without a commercial driver's license, provided: (1) these operators hold a restricted commercial driver's license issued in accordance with federal regulations, and (2) these vehicles are operated in accordance with federal regulations. The bill also authorizes the Highway Department to issue a restricted commercial driver's license in accordance with federal law and applicable regulations.

Compliance with Comprehensive Health Education Act (H. 3369, Rep. Fair). Current state law requires the State Department of Education to assure the compliance of school districts with the State's comprehensive health education program act. This bill would require the State Board of Education also to assure district compliance with this act.

Speeding in Highway Work Zones (H. 3374, Rep. Harrelson). This bill would make it unlawful for anyone to drive a motor vehicle in a highway work zone at a speed in excess of the speed limit set and posted by signs. Anyone violating the established speed limit would be guilty of a misdemeanor and, upon conviction, be fined between \$75 and \$200. Half of the fine imposed would be deposited in the state highway fund. The bill defines a "highway work zone" as the area between the first sign which informs motorists of the existence of the highway work zone and the last sign which informs motorists of the end of the work zone. The fine imposed by this bill would apply only if a sign is posted at the entrance to the work zone which states "Highway Work Zone---No Speeding---Fines up to \$200." The bill also would prohibit a vehicle from being driven

so as to overtake and pass another vehicle in a highway work zone where road maintenance or construction is underway and passing would be hazardous to a highway worker. Anyone violating this provision would be guilty of a misdemeanor and upon conviction be fined not more than \$100 or jailed for a maximum of 30 days.

School Transportation (H. 3384, Rep. Jaskwhich). This bill would require the State Department of Education to study the feasibility of using existing public transportation systems as a method of providing school transportation. The findings of this study would be reported to the appropriate standing committees of the General Assembly no later than July 1, 1993.

Off-Campus Religious Instruction (H. 3387, Rep. Fair). This bill would require a school district board of trustees to authorize a student to be excused from school to attend a class in religious instruction. This authorization would be granted if: (1) the student's parent or guardian gives written consent; (2) the sponsoring religious institution maintains attendance records and makes them available to the student's public school; (3) transportation to and from the religious instruction is the complete responsibility of the sponsoring religious institution, parent or guardian; (4) the sponsoring religious institution makes provisions for and assumes liability for the student who is excused; and (5) no public school personnel are involved in providing the religious instruction.

At the middle, junior or high school levels, classes in religious instruction must be timed to coincide with the regular daily class schedule. At the elementary school level, participating students must be excused for a minimum of 1 hour a week for religious instruction. The participating student would be responsible for making up any missed work. While in attendance in a religious instruction class under these provisions, a student would not be considered to be absent from school.

Judiciary

Restructuring Study Committee (H. 3318, Rep. Harrelson). This joint resolution would establish a South Carolina Government Restructuring Study Committee for the purpose of determining whether, and to what extent, state boards, committees, commissions, agencies and councils should be restructured. This committee would consist of 17 members, to include 4 state constitutional officers (Lieutenant Governor, Attorney General, Comptroller General and Secretary of State), 5 members of the Senate (appointed by the President Pro Tempore), 5 House members (appointed by the Speaker), and 3 people appointed by the governor. This joint resolution lists procedures for conducting committee meetings and allows the committee to designate and utilize employees of the General Assembly for clerical, legal and research assistance.

Committee members would not be compensated for their service

but would receive mileage, subsistence and per diem for performance of their duties. Committee expenses would be paid from approved accounts of both the House and Senate. Following the study, the committee would present a written report of its findings and any recommendations to the Governor and General Assembly. After presentation of this report, the committee would be dissolved.

Disqualification of Impaired Jurors (H. 3319, Rep. Baxley). Currently under state law, a person may not be disqualified for jury service solely because of blindness. This bill would also exempt from disqualification for jury service a person who is hearing or speech impaired or physically handicapped, so long as they are not disqualified solely because of their physical handicap. However, a juror as listed above could be disqualified by the court for service on a particular case if, in the discretion of the Court, the evidence is of a nature that the juror's disability would interfere with his ability to comprehend evidence. If the court finds that a juror is disqualified due to disability, the court would state its finding on the record.

The bill also provides that when a deaf person is a juror in a legal proceeding, the court would appoint a qualified interpreter to interpret the proceedings for the deaf person unless the deaf person waives this right or the judge finds the interpreter is not necessary for the fulfillment of justice.

Although under current law, the costs of interpreting services for a deaf person in a legal proceeding are paid either out of the state's general fund or by the county where the proceedings occur, this bill would provide that the costs would be paid solely out of the State's general fund, from funds appropriated to the Judicial Department by the General Assembly for the office of Court Interpreter for the Deaf.

The bill then lists criteria for use of the interpreter while the deaf person is hearing testimony in a legal proceeding and participating in jury deliberations.

Court Interpreter for the Deaf (H. 3320, Rep. Baxley). This bill establishes the position of Court Interpreter for the Deaf and provides qualifications for his selection. This position would be located within the State Judicial Department, and the person holding this position would be appointed by the Chief Justice and serve at his pleasure. The Court Interpreter for the Deaf would have to be certified by the National Registry of Interpreters for the Deaf with a "Specialist Skills: Legal Certificate" Designation and would receive compensation as provided by the General Assembly in the annual general appropriations act. This interpreter would assist a deaf person who is a witness or party in a legal proceeding or is confined to an institution so that the deaf person can understand the proceedings. This interpreter would not charge a fee for his services. However, if this interpreter is not available for a proceeding, the court where the proceedings take place could appoint a qualified interpreter, the fee for whom would be determined by the court and which would be paid out of the

general fund of the State from funds provided to the Judicial Department for this purpose.

Regulation of Municipal Utilities (H. 3321, Rep. Corning). This bill would allow the State Public Service Commission to regulate a public utility owned or operated by or on behalf of an agency of a municipality or its agency which furnishes or supplies water, sewerage collection or sewage disposal outside the municipality's corporate limits if the utility charges higher rates for services it provides outside the municipality's corporate limits than it does for the same services provided within the municipality's corporate limits. The commission's regulation of the utility would be limited, however, to the extent of the difference in the 2 sets of rates. These provisions, however, would not apply to a commission of public works or a special purpose district.

Confidentiality of Juvenile Criminal Records (H. 3329, Rep. Sheheen). This bill would open to public inspection the criminal records of juveniles charged with various offenses. Under this bill, peace officers' records of children would be open to public inspection if the record pertains to a violent crime, a crime in which an illegal weapon was used, or a controlled substance violation for which a sentence could be for more than 1 year. Also, upon the request of the Attorney General or a circuit solicitor made pursuant to a current criminal investigation or prosecution, the Department of Youth Services would provide the requesting party a copy of the juvenile criminal record of a person adjudicated as a juvenile for a crime in which an illegal weapon was used or for a controlled substance offense for which the sentence could be longer than 1 year. The Department would be required to maintain the juvenile record of a person for 10 years after the date of an offense adjudication for either of the above-listed offenses or for a violent crime. Furthermore, the juvenile records maintained by Family Courts and the Department would be open to public inspection without a judge's consent if the records pertain to a violent crime, a crime in which an illegal weapon was used, or a controlled substance offense for which a sentence could be longer than 1 year. The bill also provides that when a juvenile is charged with a crime in which an illegal weapon was used, the Department, if requested, could provide the victim with the name and other information concerning the juvenile, examples of which include victim services for victims of juvenile crimes and the juvenile justice system. The name, identity or picture of a child under the jurisdiction of the Family Court could not be made public by a newspaper, radio or television station except as authorized by order of the court or if the juvenile is charged with a violent crime, a crime in which an illegal weapon was used, or a controlled substance offense for which the sentence could be longer than 1 year.

Under current law, a law enforcement agency which takes a juvenile into custody can fingerprint a juvenile charged with a violent crime. This bill also would allow the law enforcement agency to fingerprint the juvenile if he is charged with grand

larceny of a motor vehicle, a crime in which an illegal weapon was used, or a controlled substance offense for which the sentence could be for more than 1 year. The bill would also expand the number of conditions under which a juvenile's records could be distributed or transmitted to another law enforcement agency to include cases in which the juvenile is adjudicated delinquent for having committed a crime in which an illegal weapon was used or for a violation of controlled substance offense for which the sentence could be longer than 1 year. The bill also would prohibit the elimination or destroying of a juvenile's fingerprint records if he is adjudicated delinquent for having committed a crime in which an illegal weapon was used or for a controlled substance offense for which a sentence could be longer than 1 year. A juvenile also would not be allowed to petition the Family Court for an order destroying all official records relating to his being taken into custody, or of his adjudication or disposition if those records include adjudication, in addition to for having committed a violent crime, for a criminal offense in which a weapon was used, or for a controlled substance offense for which a sentence could be longer than a year.

The bill also provides that under no circumstances is a person allowed to expunge an adjudication for a criminal offense in which an illegal weapon was used or a controlled substance offense for which a sentence could last longer than 1 year. Additionally, if a juvenile has been adjudicated and committed to the Department of Youth Services for a crime in which an illegal weapon was used or a controlled substance offense as noted above, the record provided to a public or private school by the Department must include a copy of, and if requested, information pertaining to that person's juvenile record. The person's juvenile criminal record must be provided by the Department to the principal of the school which the juvenile is eligible to attend immediately upon the person's release from the Department.

Child Abuse and Neglect Hearings (H. 3330, Rep. Tucker). This bill would amend state law so as to provide that in all child abuse and neglect hearings, the interests of the State and the local child protective services agency must be presented by legal representatives of the Department of Social Services rather than by the circuit solicitor or his representative in the judicial circuit. Additionally, this bill would delete the current requirement that a local child protective service agency cooperate with the local circuit solicitor within the area it serves.

Judicial Retention Elections (H. 3339, Rep. Wofford). This joint resolution seeks to amend the Constitution so that after the General Assembly elects justices to the Supreme Court and the Court of Appeals and elects judges to the Circuit Court, retention elections would be held, as provided by the General Assembly, to allow the state's voters in the case of justices elected to the Supreme Court and Court of Appeals and to allow voters in an area from which judges are elected in the case of judges elected to

Circuit Court to determine if they should serve an additional term. If a majority of voters do not favor retention, a vacancy would exist upon the expiration of the term of the justice or judge, and the General Assembly would elect someone to fill the position. The defeated justice or judge would not be eligible to succeed himself. If approved by the General Assembly, this constitutional amendment would be submitted to the state's voters at the next general election.

Prohibited Releases on Bond (H. 3340, Rep. Wofford). This bill would prohibit a court from releasing on bond anyone charged with murder, kidnapping, criminal sexual conduct in the first degree or criminal sexual conduct with minors.

Blood Alcohol Testing and DUI Videotaping (H. 3345, Rep. Jennings). This bill provides for the suspension of the license of (1) anyone under 21 who, while operating a motor vehicle, has a blood alcohol content of .04 percent or greater and (2) anyone age 21 or over operating a motor vehicle with a blood alcohol content of .15 percent or greater. The bill also provides for the videotaping of a person who, arrested for DUI, is tested for his blood alcohol content.

Under this bill, a person under age 21 who, with a blood alcohol content of .04 percent or greater, operates a motor vehicle would have his license suspended for 90 days. This would be in addition to any other penalties as provided by law. A law enforcement officer who arrests a person under age 21 for a state or local traffic offense could order that person to be tested for blood alcohol content. Tests would be administered at the direction of the arresting officer. The arrested person would be offered 2 breath tests to determine his blood alcohol content. The bill allows for the arrested person to be administered a blood test in lieu of a breath test if he has an injured mouth, or is unconscious, or for another reason considered acceptable by licensed medical personnel. The bill lists the procedures for conducting these tests, which would be paid from the State's general fund. The arrested person being tested or giving samples could choose to have additional tests conducted, at his own expense, by a qualified person of his choosing. No inference, however, could be taken from a person's failure to request additional tests.

If the arrested person refuses to submit to testing as requested by the officer, no test would be given, but his license or permit to drive, or nonresident operating privilege, would be suspended by the Department of Highways and Public Transportation for 90 days. If the person submits to tests and it is revealed that his blood alcohol content in both tests is .04 percent or greater, his license or permit to drive or nonresident's operating privilege also would be suspended for 90 days. If the person is a resident without a license or permit to operate a motor vehicle in South Carolina, the Department would deny issuance of a license or permit to that person for 90 days after he otherwise would be eligible to

be licensed. No tests could be administered or samples taken unless the person has been informed that he does not have to be tested or give samples, but that his privilege to drive must be suspended for 90 days if he refuses to submit to the tests.

If both breath tests do not indicate a blood alcohol content of .04 percent or greater, a person would be considered not to have violated these provisions. A law enforcement officer would serve a notice of suspension and immediately take possession of the license or the permit of the person who refused to submit to testing or whose tests revealed a blood alcohol content of .04 percent or greater. The notice and order of suspension would serve as the person's temporary license for 20 days. The person arrested would receive a judicial hearing before a magistrate, municipal judge or recorder within 20 days of his arrest unless he waives his right to this judicial hearing. If the person waives his right to a hearing or fails to appear at the hearing without just cause, the suspension based on the arresting officer's report is final. In a judicial review on the refusal of a person to submit to testing, the sole issues to be considered are whether: (1) the person was placed under arrest; (2) the person was informed he did not have to take the tests, but that his privilege to drive must be suspended or denied if he refused to submit to the tests as requested by the officer; and (3) the person refused to submit to the tests upon the officer's request. In a judicial review on the operation of a motor vehicle by someone under age 21 with a blood alcohol content of .04 percent or higher, the sole issues to be considered are whether: (1) the person was placed under arrest; (2) the person was advised of the consequences of registering a blood alcohol content of .04 percent or greater; (3) the person registered a blood alcohol content of .04 percent or higher on 2 consecutively-administered tests and that there was not a variance of the tests of not more than .02 percent; (4) the individual taking samples was qualified; and (5) the samples given and tests administered were in accordance with state law.

The Highway Department, after the judicial review, would order that the suspension, or determination that there should be a denial of issuance, either be rescinded or sustained. If the suspension is rescinded, the license would be promptly returned. After final determination that a nonresident's privilege to operate a motor vehicle in South Carolina has been suspended, the Highway Department would provide this information to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license and would forward the license to the appropriate state motor vehicle administrator. A person required to submit to testing must be provided a written report of the incident and accompanying tests. A person whose driver's license is suspended as provided for in this bill would not be required to file proof of financial responsibility. In a criminal prosecution, only the lower breath test would be admissible as evidence.

The bill also provides for the suspension of the driver's license of anyone 21 or older who operates a motor vehicle and who is determined to have a blood alcohol content of .15 percent or higher. The testing procedures are identical to those as listed above for determining the blood alcohol level of a person under age 21, except that in the case of a person 21 or over, the person would be offered a second test if a first test had already been given because he had operated a vehicle while under the influence. If the arrested person refuses at the officer's request to submit to testing, none would be given, but the Highway Department, based on the report of the arresting officer that the person was operating a motor vehicle while under the influence of alcohol and refused to submit to testing, would suspend his license or permit to drive, or any nonresident operating privilege, for 90 days. If the person is a resident without a license or permit to operate in this state, the Department would deny to the person issuance of a license or permit for 90 days after the date of the alleged violation. The suspension would begin with the day the final determination of suspension is made. The report of the arresting officer would have to include the grounds he had for believing that the arrested person had been operating a motor vehicle while under the influence of alcohol.

If the defendant under arrest submits to testing and it is revealed that his blood alcohol content is .15 percent or greater, his license, permit to drive or any nonresident operating privilege would be suspended for 90 days. However, a person would be in violation of these provisions only if both tests indicated a reading of at least .15 percent. The arresting officer would take possession of the license or permit and issue an order of suspension which would serve as a temporary license effective for 20 days. The suspension period would begin 20 days after the issuance of notice and order of suspension.

The arrested person would have the right to a hearing upon suspension of his license, whether or not he consented to testing. In the event that the person did not submit to testing, the Highway Department would provide him opportunity for a hearing in accordance with the State Administrative Procedures Act. The scope of this hearing must be limited to whether: (1) the person was placed under arrest; (2) the person had been informed that he did not have to take the test, but that his privilege to drive would be suspended or denied if he refused to submit to testing; and (3) he refused to submit to testing as requested by the officer. The Department then would order that the suspension or determination that there should be a denial of issuance either be rescinded or sustained. If the person did submit to testing which revealed a blood alcohol content of .15 percent or higher, he would be entitled, upon his request, to a hearing before a magistrate, municipal judge or recorder within 20 days after his arrest. If the person fails to request a hearing or fails to appear at one without just cause, the suspension based on the arresting officer's report would become final. The sole issues to be considered in a judicial review on the operation of a motor vehicle while a person had a

blood alcohol content of .15 percent or higher are whether: (1) the person was placed under arrest; (2) the person was advised of the consequences of registering a blood alcohol content of .15 percent or higher; (3) the person registered a blood alcohol content of .15 percent or higher on 2 tests and that the variance of the tests did not exceed .02 percent; and (4) the samples taken and tests administered were done by qualified individuals and in accordance with state law. The Highway Department, after judicial review, would then order that the suspension, or determination that there should be a denial of issuance, either be rescinded or sustained. If the suspension is rescinded, the license would be promptly returned to the person. When it was finally determined that a nonresident's privilege to operate a motor vehicle in this state had been suspended, the Department would give this information to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license. The license would be forwarded to the appropriate state motor vehicle administrator.

A person required to submit to testing by the officer would be provided a report of the incident, to include test results. A person whose driver's license is suspended under these provisions would not have to file proof of financial responsibility. In a criminal prosecution with regard to these provisions, only the lower of the 2 tests would be admissible as evidence.

A person under age 21 arrested for having a blood alcohol content of .04 percent or higher, or anyone arrested for driving under the influence, would have his conduct at the testing location videotaped. The videotape would include the entire breath test procedure. During the accompanying trial, failure by the law enforcement officers of the arresting jurisdiction to produce a videotape would not alone be grounds for dismissal of the charge if the arresting officer submits a signed affidavit that the videotape equipment in the arresting jurisdiction was at the time of arrest inoperable even though reasonable efforts had been made to maintain the equipment in an operable condition, or, if he submits a signed affidavit certifying that it was physically impossible to produce a videotape due to exigent circumstances.

Anyone pleading guilty or nolo contendere to or forfeiting bond for driving under the influence would be assessed a \$10 fee, to be collected by a court official and remitted to the State Law Enforcement Division (SLED). SLED would be responsible for supplying and maintaining equipment necessary to conduct the videotaping as required by these provisions.

Abolishment of ABC Commission (H. 3353, Rep. Fair). As proposed by this bill, the State Alcoholic Beverage Control Commission (ABC Commission) would cease to exist as a separate agency or department of state government as of July 1, 1993. The terms of the members of the ABC Commission would also cease on that date. The powers, duties, functions, rights and privileges of the ABC Commission would be divided among the State Law Enforcement

Division (SLED) and the State Tax Commission according to activities and roles; SLED would assume the ABC Commission's activities involving law enforcement, regulation enforcement and inspections, while the Tax Commission would assume the ABC Commission's activities involving licensing and assessment of penalties for administrative violation of law or regulations. Property of the ABC Commission devoted to exercising its powers and duties would be apportioned between the Tax Commission and SLED, as determined by the State Budget and Control Board, while personnel of the ABC Commission would have priority for positions necessary to perform the Commission's responsibilities which are transferred to SLED and the Tax Commission.

The bill also provides that when law enforcement personnel of the ABC Commission are transferred to SLED, these personnel would continue to meet the qualifications and criteria formerly applied to them at the Commission but would not automatically be considered to have been appointed SLED agents unless further action was taken to do so by the governor or the chief of SLED. Fines, fees and forfeitures or revenues imposed or secured by the Division of the ABC Commission would be transferred to SLED or the Tax Commission depending on the nature of the fees and as dictated by the State Budget and Control Board and must continue to be used and expended for those purposes now provided by law. If a portion of the fines, fees, forfeitures or revenues were required to be used for the support, benefit or expense of the licensing and law enforcement personnel, the funds would continue to be used for those purposes.

The bill provides for establishment of a South Carolina Alcoholic Beverage Control Hearing Officer within the State Tax Commission, to be funded by this Commission. The hearing officer would perform adjudicatory functions previously under the purview of the ABC Commission. The hearing officer would be appointed by the governor, with the advice and consent of the Senate, for a term of 6 years. No hearing officer would be allowed to serve more than 2 full terms in office. To qualify for this position, a person would be required to be an attorney, admitted to the profession for at least 5 years, and upon assuming the position would receive a salary equal to 90 percent of the salary of a circuit court judge. The hearing officer would be allowed, if work requires, to designate a temporary hearing officer, who would be retained for those limited purposes designated by the hearing officer at a per hourly rate approved by the Attorney General. The appointment of the temporary hearing officer also would have to be approved by the chairman of the Tax Commission. The temporary hearing officer could not be employed by the Tax Commission or an agency bringing enforcement action or having any connection with the preparation of evidence for a hearing for which he acts as temporary hearing officer.

The ABC hearing officer would have several duties. He would be allowed to conduct hearings on protested applications and contested violations, administer oaths and authorize another person to hold and conduct hearings, issue subpoenas and administer oaths and take testimony. The hearing officer also could a monetary penalty as an

alternate to revocation or suspension in cases where the hearing officer has the authority to suspend or revoke a license or permit. The hearing officer also could suspend payment of the monetary penalty imposed.

In order to enforce laws and regulations pertaining to alcoholic beverages and beer and wine, SLED's Division of Alcoholic Beverage Control would be authorized to employ 11 investigators and other necessary personnel who would function under the control of SLED. No member of SLED or of licensing or adjudicatory positions within the State Tax Commission would be allowed, directly or indirectly, to have any interest in the manufacture of or dealing in alcoholic liquors or in an enterprise or industry in which alcoholic liquors are required; or to receive a commission or profit on the purchase or sale of alcoholic liquors by any person; or to have an interest in or mortgage or deed of trust on land or a building where alcoholic liquors are manufactured or offered for sale, or sold or in personal property used in the building.

Any decision of an ABC hearing officer which revokes or suspends a license or permit or imposes a monetary penalty instead of revoking or suspending a license or permit could be appealed to the State Tax Commission. Appeals from a decision of the Tax Commission would go to the Court of Common Pleas for the county of the appellant's residence or to the Court of Common Pleas for Richland County.

The bill would require a person to surrender promptly an alcohol license or permit as issued under state law upon the request of the State Tax Commission. Licenses and permits would be the Tax Commission's property and would not be transferable. Licenses and permits would be surrendered immediately to the Tax Commission upon termination of a business, a change of ownership, possession or control of a corporation or business entity, or upon a change in the character of the property, facilities, or nature of the business activity for which the license or permit had been obtained. The ABC hearing officer, on behalf of the Tax Commission, would be allowed to suspend or revoke all other licenses or permits held by a person whose license or permit has been suspended for a particular premises if the location of the premises with the suspended or revoked license or permit is within close proximity to other places for which the person holds other licenses or permits.

The bill would also require that before a new application for a license or permit is approved and issued by the Tax Commission, the application would have to be reviewed and approved by the local planning commission for the area in which the license or permit would be effective. The bill defines local planning commission to include a municipal planning commission, a county planning commission or a joint municipal-county planning commission. The bill lists the procedure for conducting this hearing and provides that the local planning commission would report its findings resulting from the hearing to the State Tax Commission and whether the planning commission approves or disapproves the application.

Foreign Business Transactions (H. 3355, Rep. Hodges). Under this bill, a foreign corporation which applies for a certificate of authority to transact business in South Carolina would no longer have to provide with the application a certificate signed by an attorney licensed to practice in this state that, in the attorney's opinion, the requirements for the application have been met.

Selection of Judges (H. 3361, Rep. Corning). This joint resolution seeks to amend the Constitution so as to change the method for selecting Justices to the State Supreme Court, the Court of Appeals, and Judges of the Circuit Court. Currently these justices and judges are elected by the General Assembly, but as proposed under this constitutional amendment, these justices and judges would be appointed by the governor upon the advice and consent of the General Assembly from a list of nominees submitted by the Judicial Nominating Commission. Upon a vacancy on the Supreme Court, Court of Appeals or Circuit Court, the Judicial Nominating Commission would select a maximum of 3 nominees for the vacancy and submit their names to the governor, except that in the case of an incumbent only his name could be submitted. If the commission submits 3 names to the governor, he must select 1 of these 3 nominees. However, if the commission submits fewer than 3 names to the governor, he could reject the nominations and ask for further nominations from the commission. From the list of nominees submitted, the governor would appoint a nominee whose name would be submitted to the General Assembly for confirmation. Upon confirmation, the members would serve in their post as currently provided by law (10 years for the Supreme Court, 6 years for the Court of Appeals, and 6 years for Circuit Court).

If the General Assembly fails to reject any appointment of the governor or the commission within 30 days after submission, the General Assembly is considered to have given consent to the appointment. If the General Assembly rejects an appointment, the same appointment procedure would be followed again. Should this procedure fail a second time in securing an appointment, the governor then would make the appointment from the original list of nominees without the advice and consent of the General Assembly being required. Any Justice of the Supreme Court or Court of Appeals or justice of Circuit Court serving in office at the time of ratification of this constitutional amendment would continue to serve in office until his term expires.

At least 6 months prior to the expiration of the term of a justice or judge as listed in this amendment, the justice or judge would petition the Judicial Nominating Commission to be retained in office or would inform the commission of his intention to retire. The commission would then review the incumbent's qualifications if he desires to be retained in office. If the commission determines that the justice or judge should be retained in office, the commission would forward the incumbent's name to the governor with a recommendation that the judge be reappointed as provided by law.

A vacancy occurring for any reason other than expiration of a term in these judicial posts would also be filled by appointment as

prescribed in this amendment, although if the unexpired term does not exceed one year it could be filled as provided by law for the particular post. (Current state law, for example, allows a Supreme Court vacancy to be filled by gubernatorial appointment if the unexpired term is no more than 1 year.) When a vacancy occurs in this manner, the incumbent would hold office only for the unexpired term of his predecessor.

This joint resolution authorizes creation of the Judicial Commission for the purpose of considering the qualifications and fitness of judicial candidates and to assist the governor in the selection of qualified justices and judges to judicial vacancies of the Circuit Court, Court of Appeals and Supreme Court and other courts of uniform jurisdiction as the General Assembly may provide by law. The General Assembly by law would provide for the establishment of the commission and for its membership, duties, functions and procedures.

Upon the General Assembly's approval of this joint resolution, it would be submitted to the state's voters at the next general election for approval. This constitutional amendment would take effect if a majority of those voting cast ballots in favor of the amendment.

Judicial Nominating Commission (H. 3362, Rep. Corning). Under this bill, a Judicial Nominating Commission would be created for the purpose of assisting the General Assembly in the selection of qualified justices and judges to judicial vacancies in the courts of record within the state court system. The commission would consist of 18 members as listed below:

(a) 6 members, 1 from each congressional district, who must be attorneys-at-law admitted to practice in the courts of South Carolina for at least 5 years and who are not members of the General Assembly;

(b) 6 members, 1 from each congressional district, who are state residents but are not attorneys-at-law or members of the General Assembly; and

(c) 6 members from the General Assembly, to include 3 from the House and 3 from the Senate.

The president of the South Carolina Bar, with the advice and consent of its board of governors, would appoint the nonlegislative, lawyer members of the commission. The governor would appoint the nonlawyer, nonlegislative members. Appointments by the South Carolina Bar president would include 3 attorneys primarily representing plaintiffs and 3 attorneys primarily representing defendants. Appointments by the governor and the president of the South Carolina Bar would be made without regard to race, creed, color, sex or national origin. Of those persons first appointed to the commission, 2 nonlegislative, lawyer members, 2 nonlawyer, nonlegislative members, and 2 legislative members would be appointed for 2-year terms, while 2 nonlegislative lawyer members, 2 nonlawyer, nonlegislative members and 2 legislative members would be appointed to 4-year terms. No member of the commission would be eligible for nomination, election or

appointment as a judge or justice of the state court system and for a period of 3 years after he is no longer a commission member. A member of the General Assembly nominated by the Judicial Nominating Commission would be required to resign as a member of the General Assembly upon nomination by the commission if he intended to seek such judicial office.

Commission members would serve for 6-year terms, but the terms of the legislative members would not extend beyond their terms in the General Assembly. Vacancies on the commission would be filled for the remainder of the unexpired term of appointment in the same manner as provided for the original appointment. Members of the commission would be paid for mileage while conducting official commission business. The commission would meet at least once annually and at other times as designated by the chairman, who would be elected at the commission's first meeting for a term of 1 year and until his successor is elected and qualifies. A quorum at a commission meeting would consist of 10 members, and the commission would be allowed to employ clerical and stenographic assistance as necessary to engage in its duties.

The commission would be responsible for determining when judicial vacancies are to occur and to investigate in advance the qualifications of those seeking nomination. The commission would send nominations for vacancies created by unforeseen circumstances (e.g., death, etc.) as promptly as conditions permitted. After investigating the qualifications of those seeking nomination, the commission chairman would schedule a public hearing concerning the qualifications of the candidates. The bill lists criteria for providing testimony at the hearing and provides that the commission would soon thereafter render its findings to each candidate.

The commission chairman, upon recommendation of the commission, could opt not to hold a public hearing if the person seeking nomination is an incumbent with no known opposition, and there appears to be no reason to hold a public hearing, and no request for the hearing is made by at least 10 members of the House and 5 members of the Senate. A person seeking a judicial nomination could apply for consideration by the commission, and a person or organization could submit to the commission the name of the person desired to be considered for nomination. The commission would observe the confidentiality of the names of the applicants except for those it submits to the General Assembly for consideration for election.

The bill lists what the commission should investigate in considering candidates for judicial office and provides that the commission would select from these persons and submit to the General Assembly the names of the 3 candidates whom it considers best qualified for the judicial office under consideration, except that of Chief Justice of the Supreme Court, for which the commission, at its discretion, could submit the name of only 1 person. Should the commission conclude that there are less than 3 applicants qualified for a vacancy, other than that of Chief Justice, only the names of those determined qualified would be submitted, along with a written explanation for the smaller number.

The commission would rate each person it nominates as "very qualified" or "qualified." The commission's nominations for the Supreme Court and any judgeship, the qualifications of which are specified in the State Constitution, would not be binding on the General Assembly, and the General Assembly could elect a person other than those nominated by the commission to those offices. However, nominations made by the commission for judgeships whose qualifications are not contained in the Constitution would be binding on the General Assembly, which must then elect 1 of the commission's nominees. If the General Assembly rejected all the nominees, further nominations must be made, under these provisions, until the office is filled.

The State Court Administrator would notify each judge and justice of the expiration of his term at least 120 days before the end of the term. The judge or justice would be considered a candidate for re-election unless he notifies the Administrator within 30 days after receiving notice of the expiration that he is not seeking re-election. If the commission makes no other nomination and the name of the judge or justice is submitted by the Administrator to the Judicial Screening Committee, the General Assembly would determine whether or not the judge or justice is re-elected. Should the General Assembly fail to re-elect the judge, the commission would proceed accordingly and submit nominees to the General Assembly for the vacancy created by the expiration of the judge's or justice's term.

The bill also lists the commission's authority pertaining to hearings, including its power to subpoena witnesses, administer oaths and gather information. Information the commission obtains to make its findings of fact, except that information presented under oath at public hearings, would be kept confidential, and after the commission has reported its findings of fact, or after a candidate has withdrawn his name from consideration, the confidential information must be destroyed.

Judicial Nominating Commission (H. 3363, Rep. Corning). Under this bill, a Judicial Nominating Commission would be created to assist the governor in the selection of qualified justices and judges to judicial vacancies on the Family Court, Circuit Court, Court of Appeals and Supreme Court. This commission would consist of 18 members, of whom 6 would be House members, chosen by the Speaker, and 6 would be Senate members, chosen by the President Pro Tem. At least 1 of the 6 appointments from each chamber would have to be a non-lawyer. The remaining 6 commission members would be 6 practicing members of the South Carolina Bar, admitted to practice for at least 5 years, and appointed by the governor, with a member from each congressional district. The 18 commission members would serve staggered terms of 4 years, and no member would be eligible to succeed himself, except that House members on the commission could serve 2 successive terms on the commission.

No commission member would be eligible for a judicial nomination while serving on the commission or for 3 years thereafter, and no commission member could hold an office in a

political party. The commission would meet at least once annually, and members would elect a chairman to a 1-year term. The chairman would be eligible to succeed himself. Ten members would consist of quorum at meetings, and no act of the commission would be valid except by a concurrence of the majority of its voting members. Organizational meetings of the commission, as defined in this bill, would be open to the public, both for attendance and participatory purposes. The General Assembly would provide for the staff and operating expenses of the commission, and commission members would receive compensation only for travel, board and lodging expenses incurred in performing commission duties.

The commission would have responsibility for determining when vacancies are to occur in the 4 courts listed above in investigate in advance the qualifications of those seeking nomination unless otherwise provided by law. Under these provisions, a vacancy is created on these courts when an appointed term expires, a new judicial position is created, or a judge can no longer serve due to resignation, retirement, disciplinary action, disability or death. The commission would announce and publicize vacancies for these courts. A person seeking consideration for nomination could make an application to the commission, and any person or organization could submit to the commission the name of a person whom it desires to be considered for nomination. The commission would announce the names of applicants or those who have agreed to be considered. The commission would be allowed to establish procedures for hearings regarding qualifications, and the bill lists the qualifications and characteristics the commission should seek in considering judicial candidates. The commission would have the power to issue subpoenas to compel the attendance of witnesses and the production of information. The commission also would be allowed to adopt, with the approval of the General Assembly, regulations as necessary for the purposes of the commission.

After investigating a candidate(s), the commission chairman would schedule a public hearing concerning the qualifications of the candidate(s). The bill lists procedures for the hearing of testimony at the hearing and permits the scheduling of an executive session by the commission for the purpose of interviewing a candidate and others the commission may wish to interview concerning the candidate's qualifications. Final deliberations of the commission would be secret and confidential, and within a reasonable time the commission would render its tentative findings with its reasons to each candidate.

The bill provides for a public hearing to be optional if a candidate for a position is unopposed, when there appears to be no substantial reason for holding the hearing, and no request is made by at least 4 commission members for the hearing. The commission chairman, upon recommendation of the commission, could determine that the public hearing is unnecessary and may not be held. Information that the commission uses to make its findings of fact would be confidential, except for information presented under oath at a public hearing. After the commission reports its findings of fact, or after a candidate withdraws his name for consideration,

the confidential information must be destroyed.

After consideration of the qualifications of candidates for a judicial vacancy, the commission would submit to the governor the names of not more than 3 nominees it considers best qualified for the post. If the commission finds fewer than 3 qualified candidates, it would report only the names of those determined to be qualified, with a written explanation for submitting fewer than 3 names. Should the commission submit 3 names, the governor must select 1 of the nominees, but if the commission submits fewer than 3 names, the governor may reject the nominees and request further names from the commission. From the list of nominees submitted, the governor appoints a nominee whose name would be submitted to the General Assembly for confirmation. Should the General Assembly fail to reject any judicial appointment of the governor or the commission within 30 days after its submission, the General Assembly would be considered to have given its consent to the appointment. If the General Assembly rejects an appointment, the same appointment procedure must be followed again, and if the procedure fails a second time, the governor would make the appointment from the original list of nominees, without the General Assembly's consent.

At least 6 months prior to the expiration of a judge's or justice's term, each judge or justice would petition to the commission either to be retained in office or to inform it of his intention to retire. There would be a presumption that each incumbent judge seeking reappointment qualifies for retention in his post. The burden of rebutting this presumption would be on the commission. The commission would investigate each incumbent seeking reappointment before expiration of this term, and could recommend that he be reappointed. If a preliminary examination indicates further inquiry is necessary before a recommendation of reappointment may be made, the commission would hold a hearing concerning the reappointment of the judge. Not later than 20 days after the close of the hearing, the commission would render its decision whether it will recommend the incumbent judge for nomination for reappointment by the governor. An affirmative vote of a majority plus one of the commission members present and voting would be required to deny recommendation to the governor for nomination of an incumbent judge to his post. The bill provides a procedure for rehearing if a judge does not receive approval from the commission, but if one is held, the decision of the commission would be final. If the commission determines that the justice or judge is qualified and should be retained, the commission would forward the incumbent's name to the governor with a recommendation that the judge be reappointed. If the commission denies recommendation to a judge or justice, or if the governor fails to make reappointment within 30 days of presentation, or if the General Assembly rejects the reappointment within 10 days, a list of not more than 3 nominees must be submitted by the commission to the governor as provided under this act.

The bill also amends those portions of the Code of Laws pertaining to the selection of judges, so as to include references

to candidate screening by the commission, appointment by the governor with the consent of the General Assembly from a list of nominees selected by the commission, and the filling of interim vacancies exceeding a year.

Development Agreements (H. 3372, Rep. J. Bailey). This bill would allow local governments and agencies to enter into development agreements with developers, for the purpose of encouraging a stronger commitment to comprehensive and capital facilities planning, ensuring the provision of adequate public facilities for development, encouraging the efficient use of resources, and reducing the economic cost of development. These agreements would provide a reasonable certainty as to lawful requirements which must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health and general welfare of the state's citizens.

A local government, as defined under these provisions, could establish procedures and requirements to consider and enter into development agreements with developers, though a development agreement would have to be approved by the governing body of the appropriate local government by the adoption of an ordinance. A local government could enter into a development agreement with a developer for development of property under these provisions if the property contained 150 acres or more of highland and the development would be over a time frame of 5 years or more.

Before entering into a development agreement, a local government would conduct at least 1 public hearing. The bill requires that notice of intent to consider a development agreement must be advertised in a newspaper of general circulation in the county where the local government is located. The notice must specify the location of the property subject to the development agreement, the development uses proposed on the property, and a place where a copy of the proposed agreement can be obtained.

The bill lists provisions which must be included in a development agreement. Among those provisions are a legal description of the property subject to the agreement and the names of its legal and equitable property owners; the duration of the agreement (though parties could extend the termination date by mutual agreement), and a finding that the permitted or proposed development is consistent with the local government's comprehensive plan and land development regulations.

Unless otherwise provided by the development agreement or other provisions of state law, the laws applicable to the development of the property subject to a development agreement are those in force at the time of execution of the agreement. The bill, however, also would allow under limited conditions a local government to apply subsequently-adopted laws to a development that is subject to a development agreement. The bill lists those conditions. If a developer commits a material breach of the terms or conditions of the agreement, the local government would serve the developer notice and give him reasonable time to correct the

breach. If the developer does not cure the material breach within the time provided, then the local government could unilaterally terminate or modify the development agreement, though only after the developer has been given opportunity to rebut the finding and determination or to consent to amend the agreement to meet the concerns of the local government with respect to the findings and determinations. A development agreement could be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

The bill also defines the validity of development agreements entered into by a local government after annexation or incorporation has taken place and conditions under which they may be modified or suspended.

Within 14 days after a local government enters into a development agreement, the developer would record the agreement with the registrar of mesne conveyance or clerk of court in the county where the property is located. If after a development agreement has been entered into state or federal laws or regulations are enacted which prevent compliance with 1 or more provisions of the development agreement, the provisions of the agreement could be modified or suspended as necessary to comply with those laws and regulations.

The provisions of this act would not be intended to alter or amend in any way the rights, duties and privileges of suppliers of electricity or natural gas or of municipalities with reference to the provision of electricity or gas service, nor would they be intended to grant to local governments or agencies any authority over property lying beyond their corporate limits.

Promulgation of Regulations (H. 3377, Rep. Townsend). This bill would prohibit, unless otherwise allowed by law, a state agency or department from promulgating regulations if its governing body, board or commission is not elected or appointed by the General Assembly or confirmed with the advice and consent of the General Assembly. State agencies and departments affected by these provisions, instead of promulgating a regulation, would recommend to the appropriate standing committees of the General Assembly having jurisdiction over the agency or department the change in state law needed to accomplish the purpose of the regulation. These provisions would apply only to agencies seeking to promulgate regulations after this act is signed by the governor. All regulations promulgated prior to the act's effective date would continue in full force and effect.

Careless Driving (H. 3406, Rep. Harrell). This bill would make it unlawful for anyone to operate a motor vehicle without due care and caution for the safety of persons and property. A person violating these provisions would be guilty of careless driving and upon conviction would be fined a maximum of \$25. A violation of these provisions would be in the nature of a warning, and therefore no points could be assessed against the person's driving record or for insurance merit rating system and recoupment purposes.

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This act would become effective upon the governor's approval. However, anyone convicted of a municipal offense for careless or negligent driving after January 1, 1990 would not have any points assessed against his driving record or for insurance merit rating system and recoupment purposes.

Ethics Seminars (H. 3407, Rep. Wilkins). This bill would require both the House and Senate Legislative Ethics Committee to conduct an annual seminar to educate those persons under each committee's jurisdiction about the requirements of the Ethics, Government Accountability and Campaign Reform Act of 1991 (hereafter called "Ethics Act"). Each public official, as defined in the 1991 Ethics Act, after assuming office would be required to attend the next educational seminar conducted by the appropriate supervisory office about the requirements of the 1991 Ethics Act. Finally, the bill would expand the duties and requirements of the State Ethics Commission so as to require the Commission to conduct annual seminars for the purpose of educating public officials under the Commission's jurisdiction about the requirement of the 1991 Ethics Act.

Election Day Registration (H. 3420, Rep. Cobb-Hunter). This bill would allow a person who is eligible to vote and has not registered with his county board of registration to register to vote on election day. A person seeking to register on election day would appear at the polling place for the precinct in which the individual maintains residence. He would complete the written application for registration and oath and provide proof of residence. An individual could prove residence for registration purposes by showing a driver's license or identification card issued by the South Carolina Department of Highways and Public Transportation.

Auto Insurance Reform (H. 3421, Rep. Cato). Under this comprehensive auto insurance reform bill, the State Reinsurance Facility would be abolished as of October 1, 1994. A South Carolina Joint Underwriting Association would then be created. As of July 1, 1996, the facility recoupment fee would not be included in the rate or premium charged by insurers of private auto insurance to drivers who qualify for a safe driver discount. However, if any losses are incurred as a result of the operations of the facility, the losses must be distributed among insured drivers until the Insurance Commissioner determined that all of the losses have been accounted for, unless provided otherwise. The Joint Underwriting Association, governed by a board of 7 directors, would consist of all auto insurers licensed to write auto insurance policies in South Carolina. Every insurer would be required to be a member of the association as a condition of its authority to continue to transact auto insurance in South Carolina. The bill would also require auto insurers to offer 4 different rates of auto insurance, all of which would be subject to any surcharges or discounts applicable under an approved merit rating plan, credit or discount plan promulgated or

approved by the Commissioner of Insurance. No later than 90 days after passage of this act, auto insurers would file with the commissioner revised rates for all other private passenger auto insurance policies written by them. The 4 rates which must be filed are (1) the preferred rate; (2) a standard rate; (3) a nonpreferred rate; and (4) a substandard rate. The bill defines these 4 rates.

Among other features, the bill increases penalties for persons convicted of operating motor vehicles without liability coverage. An operator or owner of a motor vehicle issued a ticket for a moving violation by a law enforcement officer would be furnished a form to complete to verify liability insurance coverage, which must be returned to the Department of Highways and Public Transportation within 15 days. Failure to return a verified form would be prima facie evidence that the vehicle was uninsured at the time of the violation. Auto insurers could refuse to write or renew private passenger auto physical damage insurance coverage after September 30, 1994 for an applicant or existing policy holder, and after this date no physical damage insurance coverage could be ceded to the Reinsurance Facility. No insurer would be required to write or renew private passenger insurance for someone who does not qualify for a safe driving discount.

The bill would also allow a person registering and licensing an uninsured motor vehicle in this state to register and license that vehicle upon payment of a sum of \$250

Labor, Commerce and Industry

Landscape Irrigation Contractor Certification (H. 3343, Rep. Trotter). This bill would prohibit, with only a few exceptions, anyone from engaging in the business of landscape irrigation contracting (hereafter called "contracting") without securing from the board (here called the South Carolina Land Resources Commission) a landscape irrigation contracting certificate. People engaged in the following activities, however, would not be required to obtain this certificate: (1) property owners performing work on their own property or using their own regular employees; (2) vendors of landscape irrigation components, materials or equipment who perform only such functions as delivery of equipment or supplies, or rendering of advice or assistance concerning installation, or provide normal warranty service or exchange of defective or damaged goods; (3) contractors engaged in the design, fabrication, installation or construction of irrigation apparatus or irrigation equipment of any type which is to be used solely for agricultural purposes; and (4) persons engaged in contracting solely as an employee of a landscape irrigation contractor (hereafter called "contractor").

The board would serve as the board of certification for these contractors and would be responsible for a number of activities, including the suspension or revocation of licenses that it issues pursuant to this certification, the adoption of minimum standards for a landscape irrigation system and for contracting, and the

annual adoption of fees for examinations, application and renewal of certification. Funds derived under these provisions would be remitted to the State Treasurer as collected. Annual appropriations would be requested by the board and could be expended as directed by the board upon requisitions directed to the Comptroller General, who would, upon being satisfied of the propriety of payment, issue a warrant for payment to the State Treasurer.

The bill also authorizes the creation of the Landscape Irrigation Contractors Advisory Council, composed of 5 members who are certified contractors and residents of South Carolina, appointed to staggered 4-year terms. No member would be eligible to serve more than 2 consecutive 4-year terms, and each member would have to be a professional contractor actively engaged in the practice of contracting for at least 5 years and in responsible charge of contracting for at least 3 years at the time of appointment. The council would meet at least twice a year and could also hold special meetings. It would elect a chairman, vice chairman and a secretary, and a quorum would consist of 3 members. Council members would receive per diem, mileage and subsistence, to be paid from the board's general appropriations.

The bill lists several responsibilities for the council. The council, among other things, would develop examination standards, evaluate those seeking certification as a contractor, review the applicant's qualifications, evaluate the examinations and specify minimum acceptable standards for a landscape irrigation system. Any applicant who fails an examination could not retake the examination sooner than 6 months after the initial examination. After the expiration of 1 year from the effective date of this act, anyone using the title or term "landscape irrigation contractor" or installing a "landscape irrigation system" and who does not possess a valid certificate would be guilty of a misdemeanor and would be liable for a civil penalty not exceeding \$2,500 for the first violation and not exceeding \$5,000 for the second and each subsequent violation. Additionally, the board could seek in circuit court an injunction prohibiting the act or practice.

The bill lists information a person seeking certification must provide in his application. In the case of applications for certificate to practice contracting made within 1 year after this act is effective, the board could waive examination requirements and instead accept evidence that the applicant is professionally competent to practice contracting as long as the applicant shall have been in responsible charge of contracting for at least 3 years prior to submitting the application. The contracting certificate would expire on January 31 of the calendar year following issuance. A person's certificate would expire if he fails to renew his application and pay the appropriate fee to the board. The bill provides penalties for those whose certificates expire and seek a renewal.

A person seeking a certificate renewal would have to have completed at least 8 hours of continuing education approved by the board within the year immediately preceding certificate renewal. The bill lists conditions under which the board may refuse to admit

a person to an examination or refuse to issue or renew a certificate. Conditions are also listed under which the board may suspend or revoke the certificate. Issuance of the certificate authorizes its holder to perform contracting in accordance with local code requirements in any municipality, county or other political subdivision of the state. No further examination or special license would be required of the holder, except business licenses, permit fees, and other such standard licenses and fees as may be required of any person doing business within the jurisdiction of the political subdivision. The board would be allowed to waive any registration requirement for an applicant who holds a valid landscape irrigation contractor certificate or license issued by another state that has registration requirements substantially equivalent to those in South Carolina.

Prize and Gift Disclosure (H. 3382, Rep. Haskins). This bill pertains to the disclosure of information with regard to the awarding of prizes and gifts. Under this bill, no person, in connection with the sale, lease or solicitation for the sale or lease of goods, property or service could represent that another person has won anything of value or is the winner of a contest unless: (1) the recipient is given a gift or item or price of value without obligation, and (2) the prize, gift or item of value is delivered free of charge to the recipient within 10 days of the representation. Furthermore, no person could represent that another person has a chance to win or to receive a gift, prize or item of value without clearly and conspicuously disclosing on whose behalf the contest or promotion is conducted and all material conditions that a participant must satisfy. The bill lists what must be disclose in oral solicitations and in written material pertaining to chances of winning a contest or promotion.

It would also be unlawful to notify someone that he will receive a gift, prize or item of value that has as a condition of receiving that gift, prize or item of value that the person pay for or purchase, lease or rent any goods or services, unless the nature of the charges to be incurred have been clearly and conspicuously disclosed. This disclosure would be given either on the face of written materials or before requesting or inviting the person to enter into the sale or lease in an oral notification. These requirements would not apply, however, if a person is asked only to complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or to call in the entry by telephone; or if a participant at no time is required to listen to a sales promotion or at no time is requested or required to pay for any merchandise, service or item of value. Nothing in these provisions would create liability for an act by the publisher, owner, agent or employee of an advertising medium (newspapers, television stations, etc.) arising out of the publication or dissemination of an advertisement or promotion when the publisher, owner or agent did not know that the advertisement or promotion was in violation of these provisions.

Also, no person could represent that another person has been

specially selected in connection with the sale, lease or solicitation for sale or lease of goods, property or service unless the selection process is designed to reach particular persons. In connection with a consumer transaction, no person could issue any writing that simulates or resembles (1) a check, unless the writing clearly and conspicuously discloses its true value and purpose, and the writing would not mislead a reasonable person; or (2) an invoice, unless the intended recipient of the invoice has contracted for goods, property or services for which the issuer seeks proper payment.

It would be unlawful to notify a person that he will receive a gift, prize or item of value and that as a condition of receiving the gift, prize or item of value the person would be required to pay for or purchase or lease, including rent, any goods and services if the shipping or handling charges exceeded a certain amount. The bill specifies the limit of shipping and handling charges under this condition. A consumer who suffers a loss because these provisions have been violated could bring a civil action to enforce these provisions, and if successful in the action, could recover reasonable attorney's fees and court costs incurred by bringing the action. The bill also specifies conditions under which sales, purchases and solicitations are exempt from these provisions.

Restriction on Auto Insurance Rate Increases (H. 3396, Rep. Davenport). This bill would prohibit an automobile insurance carrier from increasing the automobile insurance premium of anyone convicted of a traffic violation which does not expose a member of the public other than himself to the threat of property damage or bodily injury. The court in which the person is convicted would determine if the violation imposed a threat of property damage or bodily injury.

Motor Vehicle Safety and Responsibility Act (H. 3401, Rep. Corning). This bill would allow every person registering and licensing an uninsured motor vehicle in South Carolina to pay, at the time of registering and licensing the uninsured motor vehicle, a sum to be fixed by the Chief Insurance Commissioner. This sum would not exceed \$100. The Department of Highways and Public Transportation could require a person applying for licensing and registering of a motor vehicle to certify whether or not his vehicle is insured, or the Department at its discretion could require that a person:

(a) produce as evidence of financial responsibility a certificate on a form prescribed by the Department of Insurance or self-insurance;

(b) has given bond or delivered cash and securities as required by these provisions; or

(c) pay the sum listed above as set by the Chief Insurance Commissioner.

Funds collected under the provisions listed above would be deposited to the credit of the State Treasurer and on a monthly

basis transferred to a special deposit fund known as the "Uninsured Motorists Fund." The fund would be under the supervision and control of the Chief Insurance Commissioner, and the bill provides for how the Fund is to be dispersed.

A person who knowingly makes a false certificate as to whether a motor vehicle is insured or gives the Department of Highways and Public Transportation false evidence that a motor vehicle sought to be registered is insured would be guilty of a misdemeanor and upon conviction be fined no less than \$500 or imprisoned 90 days. The Department would deny for 6 months the registration of any motor vehicle for which a false certificate or false evidence is presented to the effect that the vehicle is insured. The Department also would revoke and not reissue for 6 months the license of a person making a false certificate or offering false evidence.

This bill also contains a number of provisions concerning self-insurance, motor vehicle security requirements following accidents, satisfaction of judgements, and minimum coverage required on policies containing bodily injury and property damage coverage.

The bill authorizes creation of a legal entity known as the Associated Automobile Insurers of South Carolina (AAI) and lists the membership composition of its initial board of directors. The bill also provides for establishment of a permanent board. Every insurer authorized to write and writing auto insurance in South Carolina would become a member of the AAI. The AAI would provide for the issuance of servicing of auto insurance policies which are noncancelable and guaranteed renewable so long as the insured remains an insurable applicant. The bill lists what policies written under the AAI must provide. Every agent authorized to solicit, negotiate or bind auto insurance on behalf of any subscriber, and every agent designated by the commissioner pursuant to laws of South Carolina would be authorized to solicit, negotiate or bind auto insurance on behalf of AAI in accordance with the plan of AAI.

Any insured who at the time of issuance of a policy providing coverage through AAI has an accident and violation-free driving record would be entitled to a policy written by any subscriber if that insured provides an official motor vehicle report which reflects an accident and violation-free driving record for not less than 24 consecutive months following the date of issuance of the policy. Every agent authorized to place business through the AAI, as a condition of that authority, would advise the applicant of benefits of possible lower rates afforded by other insurers represented by the agent, if any.

Restricted Beer and Wine Sales (H. 3402, Rep. Haskins). This bill would make it unlawful for a business which sells gasoline or other motor fuels and which also holds a permit to sell beer and wine to: (1) sell refrigerated or chilled beer or wine, or (2) sell fewer than 6 separate containers of beer to one customer. Anyone violating these provisions would be guilty of a misdemeanor and upon conviction be fined not more than \$200 or imprisoned not more

than 30 days. Additionally, the bill states that following the person's conviction, the business's permit to sell beer and wine must be revoked.

License Renewals for Landscape Architects (H. 3409, Rep. Richardson). This bill would require a landscape architect seeking a renewal of his professional license to first complete a minimum of 15 contact hours of continuing education, approved by the South Carolina Land Resources Conservation Commission within the previous license year. The Landscape Architect Advisory Council would recommend to the Commission regulations governing the administration of the continuing education requirements. Documentation of compliance with these provisions would be by affidavit provided on the application for license renewal. Erroneous or false information attested to by the licensee would be grounds for denial of license renewal and possible suspension of license or denial of consideration for future license reinstatement. These continuing education requirements would apply effective January 1, 1994 for persons renewing their license in 1995.

Medical, Military, Public and Municipal Affairs

Prosthetic Devices (H. 3332, Rep. Davenport). This bill would require that any contract let by an agency for prosthetic devices or other specialized equipment made for the purpose of improving the quality of life of handicapped persons in this state must allow state residents not otherwise eligible for benefits under the contract at the state's contracted-for price. A private purchaser would reimburse the agency for the cost of the item purchased in the manner that the agency provides, including measures reasonably necessary to ensure payment. The agency could retain 100 percent of these private reimbursements.

Recovery of User Fee Costs (H. 3335, Rep. Kirsh). This bill would authorize the South Carolina Department of Health and Environmental Control to establish a Safe Drinking Water Trust Fund and to collect a user fee from each public water supply to be deposited in the fund. The Department would use the fund to defray the costs of fulfilling federally-mandated monitoring requirements through collecting samples and conducting laboratory analyses and for implementing other requirements and provisions of the Federal Safe Drinking Water Act. All interest earned by the fund would accrue to the fund. Each public water supply would pay the Department a user fee not exceeding 50 cents a month for each service connection, based upon the number of service connections in use on July 1 of the state fiscal year in which the user fee is to be paid, except that:

- (1) a water supply serving less than 15 service connections would pay an annual user fee of \$100;
- (2) a water supply serving 15 or more service connections

would pay an annual user fee of at least \$500;

(3) no user fee on an annual basis could exceed \$150,000.

Each fiscal year the Department would notify each public water supply of the amount of the charge for each service connection to be used in determining the fee and the total amount of the fee dues to the Department. Each public water supply would remit payments on a quarterly basis no later than 30 days following the end of each quarter. Each public water supply would pay the full amount of the fee no later than 30 days following the end of the fiscal year. Each public water supply would determine the number of service connections by adding the number of residential units and residential equivalent units, and each public water supply would provide the number of residential units and residential equivalent units to the Department upon request. The bill defines "residential unit" and "residential equivalent units." The Department would be allowed to assess a public water supply a penalty for late or nonpayment of the user fee. In this case, a penalty up to 50 percent of the unpaid amount could be assessed for a payment not paid within 30 days of the due date, and the Department, after conducting a hearing, could revoke the operating permit for a public water supply which fails to pay the required fee.

A public water supply required to pay this user fee could increase its rate for purposes of recovering the cost of the fee without the rate increase being subject to approval from the State Public Service Commission.

The Department of Health and Environmental Control also would be authorized to establish an advisory committee to assist the Department in providing information and advice regarding implementation of the Safe Drinking Water Act. The commissioner would appoint 6 members to the advisory committee who represent small, medium and large size water supplies. Committee members would serve 2-year terms.

Parole Hearings (H. 3338, Rep. Wofford). This bill would require any prisoner serving time for a violent crime be reviewed for parole every 5 years, as opposed to the current requirement of every 2 years, following the parole board's rejection of his request for parole.

Tort Liability Coverage for Officers (H. 3356, Rep. Simrill). This bill provides that when law enforcement officers are sent to another municipality in a case of emergency, the tort liability coverage the officers have in the sending jurisdiction would be extended to and include the area in which that coverage is or could be afforded to the law enforcement officers of the requesting municipality or political subdivision. The bill also states that failure to record a request for officers in an emergency case at the next regular or special meeting of the governing bodies of both the requesting and sending municipalities would not affect the applicability of tort liability coverage.

Liability Coverage for Officers (H. 3388, Rep. Simrill). This bill would require that when law enforcement officers are sent to another political subdivision in an emergency, the liability insurance coverage the officers have in the sending municipality would be extended to include the area in which these benefits are or could be afforded to the law enforcement officers of the requesting political subdivision.

Compensation for Reserve Police Officers (H. 3408, Rep. Hodges). This bill would require a police chief who appoints reserve police officers to provide for their compensation, with the approval by the municipality.

Code Enforcement Officers (H. 3416, Rep. Gonzales). This bill would authorize a municipality to appoint and commission as many code enforcement officers as may be necessary for the proper security, welfare and convenience of the municipality. These officers would be vested with the powers and duties conferred by law upon constables, in addition to duties imposed upon the officers by the municipality's governing body. Although these code officers would exercise their powers on both public and private property in the municipality, under these provisions they would not be allowed to make custodial arrests.

Ways and Means

Abolition of SHIMS Fund (H. 3322, Rep. Corning). This bill would abolish the Strategic Highway Plan for Improving Mobility and Safety Fund (SHIMS fund) and require that the proceeds from additional taxes on gasoline which are not required to be credited to the currently existing State Economic Development Account to be deposited into the State Highway Fund. Any tolls derived from toll roads would be returned to the State Highway Fund until the fund is reimbursed. The bill states that when the term "Strategic Highway Plan for Improving Mobility and Safety (Program)" appears in the 1976 Code of Laws, it is construed to mean the "State Highway Fund."

County Expenditure of C Funds (H. 3331, Rep. Davenport). This bill would authorize a county to spend 25 percent of its apportionment of "C" construction funds on the maintenance and repair of the county's infrastructure, including but not limited to water and sewer lines.

Mandatory Retirement for Highway Patrol (H. 3333, Rep. Boan). This bill would amend current state law so as to repeal the requirement that officers of the State Highway Patrol retire by the end of the fiscal year during which they reach age 62.

Repeal of Energy and Conservation Act (H. 3344, Rep. Felder). This bill would repeal the 1992 South Carolina Energy Conservation

and Efficiency Act unless this Act is continued by an act of the General Assembly prior to July 1, 1994.

Biennial Appropriations (H. 3386, Rep. Hutson). This bill would require the General Assembly, beginning with its 1994 session for the ensuing 2 fiscal years and in each session every 2 years after 1994 for the 2 fiscal years next ensuing, to enact a biennial state general appropriations act in a form and under conditions the General Assembly considers appropriate. On and after July 1, 1995, the term "annual state general appropriations act" or similar variations of the term as contained in any provision of law must be construed to mean the biennial state general appropriations act. The bill would also require that the State Budget and Control Board and the General Assembly, including its appropriate committees, to use a "zero-base" budget process in the preparation of the biennial state general appropriations act beginning in 1994.

Privileges of Nonresidents at State Parks (H. 3393, Rep. Davenport). This bill would allow nonresidents who are elderly, blind or disabled to use South Carolina state parks with the same privileges as those granted to South Carolinians with these characteristics if the state parks in the nonresident's state of residence extend similar benefits to similarly-situated residents of this state.

Submission of Budget Recommendations (H. 3399, Rep. Boan). Under this bill, the functions of the State Budget and Control Board with regard to preparation and submission of the recommended state budget to the General Assembly would be transferred to the governor.

A PROPOSAL
BY THE
HOUSE WAYS AND MEANS COMMITTEE
FOR
STATE AGENCY
RESTRUCTURING AND CONSOLIDATION
(DRAFT)

Februrary 1993

Constitutional Officers

Governor's
Office

Governor's Office
Administrative Law Judges (6) -
(Tax, ABC, DHEC, Procurement
Workers' Compensation Appeals)

Lieutenant
Governor

Comptroller
General

Attorney
General

Prosecution Coord. Comm.

Department of Agriculture
& Natural Resources

Wildlife
Agriculture
Clemson PSA - Regulatory
(Meats and Pesticides)
Coastal Council
DHEC - EQC
Land Resources
B & C Brd. Geological Map.
Migratory Waterfowl Comm.
Sea Grant Consortium
Water Resources

Legislative

Legislative Departments

Secretary of
State

Treasurer's
Office

Board of Financial Institutions

Adjutant
General

Department of Public
Education

Public Education
ETV
John De La Howe
School for Deaf & Blind
Will Lou Gray Opportunity Sch.

Judicial Department

Sentencing Guideline Comm.

Agency Head appointed by the Governor, with the advise and consent of the House and Senate.

Revenue Department

Tax Commission
ABC - Licensing
HWY Division of Motor Vehicles

Department of Public Safety

SLED
Highway Patrol
ABC - Enforcement
B & C Board/ Fire Marshal
Law Enforce. Hall of Fame
Law Enforce. Training Council
PSC Law Enforcement

Department of Citizen Affairs

Human Affairs
Appellate Defense Comm.
Comm on Women
Consumer Affairs
Guardian Ad Litem
SOVA
Veteran Affairs

Department of Corrections

SCDC
DYS
Probation, Pardon & Parole

Department of Licensing & Regulation

ESC (Same Comm.)
Professional and Occupational Licensing Agencies (POLAS)
PSC (Same Comm.)
Labor

Department of Insurance

Insurance Department
Patients' Comp. Fund
Second Injury Fund
Wkr's Comp. - Admin.
Workers' Comp. Fund

Department of Health

DHEC/ Health, Services & Regulatory
SCCADA

Department of Mental Retardation & Disabilities

DMR
Comm. for Blind
DMH / Autism
Spinal / Head Injuries

Department of Adult, Family, & Children Services

Aging
DSS
Foster Care Rev.
Housing Authority

Department of Mental Health

Continuum of Care

Department of Health and Human Services

Health and Human Services
Finance Commission

Vocational Rehabilitation

Department of Commerce

Development Board
Coor. Coun. for Econ. Dev.
DHEC/ Water & Sewer
Housing Auth. Hm. Ownership
JEDA
Railways Commission
Research Authority

Department of Public Transportation

Highway Dept / Except patrol
Aeronautics
B&CB - DMVM
Public School Transportation

Department of Parks, Tourism & Cultural Affairs

PRT
Archives
Arts
Cofederate Relic Room
Columbian Quincen. Comm.
Library
Museum
Old Exchange Building
Patriot's Point

Agencies Unaffected :

Election Commission

Ethics Commission

**Higher Education
Except Clemson PSA :
Forestry Commission**

Ports Authority

Santee Cooper

Savannah Valley Authority

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Date 2-9-93

S. C. Legislative Council